



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,373	09/12/2000	Reto Hermann	CH919990045-US1	6807

7590 06/14/2004
Anne V Dougherty
3173 Cedar Road
Yorktown Heights, NY 10598

EXAMINER

NGUYEN, CAO H

ART UNIT	PAPER NUMBER
----------	--------------

2173

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/660,373

Applicant(s)

HERMANN ET AL.

Examiner

Cao (Kevin) Nguyen

Art Unit

2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 2173

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Ballantyne et al. (US Patent No. 5,867,821).

Regarding claim 1, Ballantyne discloses an electronic device for receiving broadcast media comprising digital signal information comprising a central processing unit (CPU) for processing digital signal information (see col. 4, lines 1-47 and figure 1); a storage medium for storing electronic data for selective on-demand viewing by authorized users (see col. 6, lines 20-57); a display; a user interface; and a digital audio broadcast receiver which receives a digital signal transmitted by a digital audio transmitter and decodes the received digital signal for use by

Art Unit: 2173

the CPU to update electronic data stored at said storage medium with said digital signal information (see col. 5, lines 1-67).

Regarding claim 2, Ballantyne discloses wherein the device comprises an electronic book (see col. 3, lines 65-67).

Regarding claim 3, Ballantyne discloses wherein the device comprises a portable database of medical records stored at said storage medium and wherein the digital broadcast transmitted by the digital audio transmitter updates said medical records of a patient (see col. 9, lines 1-15).

Regarding claim 4, Ballantyne discloses further comprising a display processing means for selectively displaying updated records (see col. 12, lines 9-47).

Regarding claim 5, Ballantyne discloses including a smart card reader and processing software, which permits a means of payment to the broadcaster of said digital signal from said digital audio transmitter (see col. 11, lines 28-67).

Regarding claims 6 and 7, Ballantyne discloses wherein the digital audio broadcast receiver is a radio receiver which extracts and delivers a digital data stream from a broadcast channel (see col. 13, lines 42-67).

Regarding claim 8, Ballantyne discloses wherein the device further comprises a smart card reader and associated smart card data processing software for handling a smart card (see col. 9, lines 1-15).

Regarding claim 9, Ballantyne discloses wherein the smart care has a cryptographic decryption key stored thereon for providing metered access to the broadcast media (see col. 9, lines 17-67).

Art Unit: 2173

Regarding claims 10 and 11, Ballantyne discloses further comprising a counter and wherein the cryptographic decryption key on the smart card is associated with a count and wherein the counter decrements the count each time at least part of the digital signal is decrypted (see col. 10, lines 1-67).

Regarding claim 12, Ballantyne discloses a system for handling broadcast media comprising: a transmitter comprising a broadcast server for transmitting a digital audio broadcast; and an electronic device comprising a central processing unit (CPU) for processing digital signal information, a storage medium for storing electronic data for selective on-demand viewing by authorized users; a display; a user interface; and a digital audio broadcast receiver which receives a digital signal transmitted by a digital audio transmitter and decodes the received digital signal for use by the CPU to update electronic data stored at said storage medium with said digital signal information (see figures 6-11A).

Regarding claim 13, Ballantyne discloses wherein the digital audio transmitter broadcasts dynamically changing channel configurations in which channel bandwidth is dynamically adapted to the broadcast media being transmitted (see col. 6, lines 32-67).

Regarding claim 14, Ballantyne discloses wherein the channel configuration is dynamically changed by identifying broadcast media which is not likely to require all available bandwidth, calculating excess available bandwidth, and allocating the excess in a manner which provides sufficient bandwidth for transient subchannels (see col. 16, lines 22-67).

Regarding claim 15, Ballantyne discloses wherein the digital audio broadcast includes content identifiers associated with the type of media broadcast; wherein the device includes a

Art Unit: 2173

screening device which selectively permits the downloading of broadcasts according to said content identifiers (see figures 11A-11D).

As claims 16-19 are analyzed as previously discussed with respect to claims 12-15 above.

Regarding claims 20-22, Ballantyne discloses wherein the smart card reader and associated smart card data processing software enable payment to the broadcaster whereby the broadcaster broadcasts, an encrypted signal and charges a set fee for a smart card having a decryption key encoded thereon and for which the smart card reader and associated smart card data processing software are capable of decrypting the signal only during a certain period of time (see col. 8, lines 1-64 and figures 6-11D).

Regarding claim 23, Ballantyne discloses a method of providing broadcast media for updating stored electronic data in a storage location at a portable electronic device, the method comprising the steps of: broadcasting a digital audio signal over a broadcast range; receiving the signal at a digital audio receiver; decoding the digital audio signal to obtain update data; and updating the contents of the storage location at the portable electronic device using the update data (see col. 14, line 5-67).

As claims 24-25 and 27-37 are analyzed as previously discussed with respect to claims 12-23 above.

Response to Arguments

2. Applicant's arguments filed on 05/05/04 have been fully considered but they are not persuasive.

On page 15 of the remarks; Applicant argues that Ballantyne fails to suggest or teach "CPU for processing digital information". However, the limitations as claimed set forth to reply

Art Unit: 2173

upon Ballantyne's "With reference to FIG. 5, for the preferred HFC cable implementation of the medical information network, normal CATV signals are received by the PCS through the CATV tuner/convertor and routed directly to the monitor for display. Control of the CATV tuner is performed by the CPU that has received its instructions (i.e. channel selection) from the input entry device interface. This input entry device interface unit is either an integral part of the monitor such as a touch screen or a separate component of the PCS as previously described. The CPU is also connected to an internal bus that handles data transfer and control/status signals which links internal memory, a graphics/decompression processor, the wireless transmitter/receiver for the PDA interface, and the PCMCIA reader/writer unit. A complementary RF tuner/convertor exists for the Video On Demand (VOD) requests. The CPU controls the channel and movie selection of the VOD tuner which routes the data to the demodulator to restore the original digital data stream. A specific memory controller is used to control the data (compressed video information) passed to the high speed memory device that is either magnetic, optical, (or combinations thereof), or solid state (includes flash card memory) depending on the amount of data transmitted. Upon playback, the compressed data is first decompressed by the decompression unit and then processed by the D/A converter and analog processor, depending on the video format to be displayed, and passed to the monitor through the video switch.

On page 16 of the remarks; Applicant argues that Ballantyne fails to suggest or teach "a digital audio broadcast receiver". However, the limitations as claimed set forth to reply upon Ballantyne's "The ML is linked to external sources via Direct Broadcast Satellite (DBS) equipment, to receive or transmit relevant information. It is also linked to external clinics, other hospitals, medical schools, general practitioner's offices, and patients' residences through landline communications, DBS or wireless communications. A multimedia electronic mail

Art Unit: 2173

system is implemented amongst authorized users. This facilitates the interaction between external users and the ML i.e. a general practitioner wants to inquire on the latest health care status of one of his/her patients.”

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., master library) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On page 18 of the remarks; Applicant argues that Ballantyne fails to suggest or teach “a digital audio broadcast receiver”. However, the limitations as claimed set forth to reply upon Ballantyne's “represent a flow chart that describes the identification and verification process that occurs when medical personnel initially attempt to gain access to the internal medical information network for the use of and modification to patient's electronic medical records. To ensure authorized personnel are only allowed access to the internal medical information network, a secure signature pen is used. This is an unique pen or stylus which each user is allocated in order to access medical information through the network This pen contains an internal memory with an encrypted replica of the personal signature of the medical personnel, which once validated by the system, allows access to the network. This replica of the user's personal signature is stored in the signature pen's internal memory in digitally compressed format that is transferred to the PDA when the pen is initially touched to the PDA tablet. Personnel signature data files of all authorized users using that particular nursing station are stored on location at the nursing station's file server system for validation purposes. The user's signature replica, having been

Art Unit: 2173

stored in the PDA, is transmitted to any PCS located at the bedside through either the wireless or broadband IR communications link and then relayed onto the nursing station where it is decompressed for comparison validation purposes.

On page 19 of the remarks; Applicant argues that Ballantyne fails to suggest or teach “a digital audio broadcast receiver”. However, the limitations as claimed set forth to reply upon Ballantyne’s “Network channels are assigned in accordance with the service being provided, a channel being 6 MHz of bandwidth, equivalent to an analog CATV channel. It is assumed that the internal communications network has a capacity of 750 MHz. of bandwidth channel capacity whose breakdown is further described in the description of the communications infrastructure. Refer to FIGS. 8A and 8B for the process performed by the communications server in the assignment of the various service channels. These Figures describe the process in assigning channels on the internal medical information network to the various services offered to the patients and the medical personnel. If the service is simple analog cable programming supplied by the local cable companies it is assigned a dedicated channel as it would appear in local TV guides. This ensures a one-to-one correspondence and facilitates patient usage.”

Accordingly, the claimed invention as represented in the claims do not represent a patentable distinction over the art of record.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (see PTO-892).
4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 2173

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cao (Kevin) Nguyen whose telephone number is 703-305-3972. The examiner can normally be reached on M-F: 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on 703-308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAO (KEVIN) NGUYEN
PRIMARY EXAMINER

06/10/04